

TESTIMONY OF

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Regarding

Federal Trade Commission Reauthorization

Before the

United States Senate

Consumer Affairs, Foreign Commerce and Tourism Subcommittee

Of the Commerce Committee

July 17, 2002  
253 Russell Senate Office Building  
Washington, D.C.

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Chairman Dorgan and Members of the Committee:

My name is Charlie Mendoza and I am a member of AARP's Board of Directors.

On behalf of AARP and its 35 million members, thank you for inviting us here this morning to discuss the performance of the Federal Trade Commission (FTC) in fulfilling its mission. AARP recognizes the important role that the Federal Trade Commission plays in protecting the interests of consumers on a wide range of issues. We support the FTC in its efforts to serve as the Nation's consumer protection agency and commend it for adapting to address evolving and troublesome deceptive practices despite limited resources.

Our testimony today will focus on the Commission's proposal to amend the Telemarketing Sales Rule. AARP strongly supports the FTC's goals to implement a national Do Not Call registry, prevent interference with Caller Identification services and eliminate the improper use by telemarketers of preacquired account information. Additionally, our testimony will touch on other issues under the jurisdiction of the Commission such as death care, identity theft and advertising restrictions.

## **Telemarketing Sales Rule**

AARP's interest in the Telemarketing Sales Rule and concerns about telemarketing abuses are long-standing. Seven years ago we were active participants in the original rulemaking proceeding. Since the adoption of the Rule in 1995, AARP has dedicated significant resources to educating consumers about telemarketing fraud and to working with federal, state and local law enforcement agencies to combat it. We have also worked with state legislatures to enact state telemarketing legislation. The existing Rule has supported these efforts and we believe that the Commission's recommended additions will strengthen the Rule.

AARP's strong support of the Telemarketing Sales Rule is well documented both at the Commission and here in the Congress through our filed comments, testimony and participation in FTC-led workshops. The Rule has served as a foundation from which AARP has been able to mount education and awareness campaigns. Our advocacy efforts have built upon the Rule's provisions regarding disclosures, prohibitions, and enforcement mechanisms. We have also conducted research related to the Rule, some of which will be described later in these comments.

The Rule has also empowered law enforcement agencies to prosecute unlawful

telemarketers and helped legitimate telemarketers to establish standards of conduct.

The existence of the Telemarketing Sales Rule has improved the ability of federal, state, and local law enforcement officials to take action against telemarketing firms, and specific violations of the Rule have led to prosecutions and, in some cases, remuneration for victims.

Finally, the Rule has provided the states with a floor of consumer protection -- and many have been successful in raising that floor. Close to thirty states have expanded upon the Rule's protections and prohibitions in developing state-specific laws and regulations that better protect consumers. At least eleven of the states have enacted laws using provisions from an AARP model law building upon the Rule, and additional states are in the process of considering comprehensive telemarketing legislation. In fact, recent AARP surveys conducted in New Jersey, Minnesota and Michigan found that an overwhelming percentage of survey participants favor additional state laws to prevent unfair, misleading, or deceptive telemarketing practices.<sup>1</sup>

## **National Do-Not-Call Registry**

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<sup>1</sup> AARP NJ Telemarketing and "Do Not Call" List Survey (January 2002); AARP Michigan Telemarketing and "Do Not Call" List Survey (April 2002); AARP Minnesota Telemarketing and "Do Not Call" List: An AARP Survey (December 2001).

AARP supports the Commission's decision to introduce a national Do-Not-Call registry, asking only that it not preempt states' efforts to establish stronger protections for consumers. As proposed, the national Do-Not-Call registry would enable a consumer to call a toll-free number to place his or her phone number on a national list. Telemarketers would then be required to access the FTC's list, removing the numbers of all consumers whose numbers appeared on the registry.

The Commission's proposal is a well-reasoned approach to address concerns AARP's members have expressed regarding their inability to stem the volume of telemarketing calls, particularly in states that currently lack Do-Not-Call laws. Provided it is properly implemented and strictly enforced, the benefit to consumers of the establishment of the registry should be substantial. A national Do-Not-Call listing would supply consumers with a sense of comfort along with a return of control over their telephone.

We are pleased that the prohibition applies to all calls within the jurisdiction of the Commission, including calls soliciting charitable contributions initiated by for-profit entities. The expanded jurisdiction accorded the FTC through enactment of the

Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) amendments is welcome. It now prevents questionable organizations soliciting on behalf of sound-alike charities from calling consumers, while allowing the local church, fire department, and fraternal organizations to continue their legitimate fundraising appeals. Doing so adds credibility to the caller and allows the call recipient to make a contribution decision on the merits, with less concern about whether the caller is representing a legitimate group.

AARP is also pleased that the FTC is considering expanding the scope of the Rule's coverage by eliminating the exemption for common carriers. Taking such action is consistent with the purpose of implementing a Do Not Call registry, which is to reduce the number of unwanted telemarketing calls to the consumer. We believe that a joint effort between the Federal Communications Commission and the FTC to include common carriers under the Do Not Call provisions of the Telemarketing Sales Rule would reduce confusion, leading to a more comprehensive registry.

The national Do-Not-Call registry would complement existing state Do-Not-Call lists. AARP has been an active participant across the country on behalf of state Do-Not-

Call lists. The continued ability of the states to protect their residents and to enforce their rules is a strong reason not to preempt them with the establishment of the registry. Statements by the Commission that “state requirements should be preempted only to the extent that the national Do-Not-Call registry would provide more protection to consumers” support our position and are consistent with AARP principles that federal consumer protections should serve as a floor, not a ceiling. While the registry will provide much needed relief to consumers across the country, some states will offer consumers even more.

## **Call Blocking**

AARP fully supports the Commission’s efforts to prohibit the blocking of caller identification (Caller ID) information. The proposed changes to the Rule that will require the disclosure of a caller or organization’s actual name and telephone number is to be applauded. AARP has strongly advocated for this change in business practices. In previous comments at the Commission and in support for legislation in both the House and the Senate, we have urged implementation of this type of requirement. We believe that consumers who spend money on Caller ID services should be able to use the product for its intended purpose. Increasingly, consumers

are asked to “take responsibility” and “make the best choice,” and become “empowered.” Inasmuch as consumers’ purchase Caller ID services to become empowered and screen telemarketers, they should be able to use these services for this purpose. Why would legitimate telemarketers want their name and/or phone number concealed, effectively rejecting a free advertisement? The existing environment that allows telemarketers to block their identifiers places consumers at a disadvantage. Not only are consumers unable to identify who is calling as the call arrives, but also they cannot return a call because the number is unavailable. Adoption of the call blocking provision of the Rule will return control of the telephone where it belongs, in the hands of the consumer.

Additionally, AARP has recommended that the name of the charitable organization with a verifiable phone number of the organization appear on the display. This would provide consumers with the information necessary to decide if they want to pick up the call. It also supplies the consumer with a phone number to call to verify that the telemarketer is indeed calling on behalf of the organization and gives the consumer a direct link to the charity if questions arise. Further, this approach enables consumers to contact government agencies such as the Better Business Bureau or state Attorney General to verify the legitimacy of the organization, and helps prevent consumers



from becoming victims. Such a requirement would likely benefit legitimate telemarketers as well, since a consumer is more likely to accept a call from the American Cancer Society than from a telemarketing firm.

### **Preacquired Account Information**

AARP strongly supports the proposed revision to the Telemarketing Sales Rule that prohibits the practice of receiving any consumer's billing information from any third party for use in telemarketing, or disclosing any consumer's billing information to any third party for use in telemarketing.

A telemarketer's ability to use preacquired account information without the obtaining this information directly from the consumer is a major concern. Historically, preacquired account information has been used in conjunction with free trial offers that end up being paid subscriptions, and complimentary memberships in travel clubs that show up at the consumer's doorstep as negative option solicitations, with dues or membership fees assessed for inaction. In these cases, not only did consumers honestly believe that they were agreeing to a free-of-charge service, they clearly were unaware of the fact that the telemarketer was already in possession of

billing information. Over and over we hear from consumers that they had no idea that money could be taken from their account without their providing an account number. This is a deceptive, unfair, and abusive practice that should be prohibited.

As with any rule or regulation, enforcement of the Telemarketing Sales Rule is critical.

Equally important is the disclosure of information regarding enforcement actions.

AARP is very concerned with the lack of national data regarding enforcement actions, the effectiveness of the Rule or even the amount of money that currently being spent on telemarketing. Absent this type of information, it is extremely difficult to measure the success of various education efforts and enforcement partnerships, including those in which AARP is engaged. Collecting national telemarketing data that is accessible to the general public would prove beneficial to all interested parties.

In sum, AARP supports the FTC's efforts to amend the Telemarketing Sales Rule to include a national Do Not Call registry with as few exemptions as possible.

Implementation of such a rule is clearly in the public's best interest and should not be delayed or weakened.

### **Death Care**

Another industry sales rule within the jurisdiction of the FTC that is of importance to AARP and its members is the Funeral Rule. Over the past decade significant change has taken place in the funeral and burial industries. Changes include: consolidation of funeral homes and cemeteries; cemeterians providing funeral goods and services and funeral directors providing burial goods and services; an increase in third-party providers; Internet shopping; and the proliferation of preneed contracts.

These changes provide consumers with a mixed bag of results -- some good, some not so good. The Funeral Rule, implemented by the Federal Trade Commission in 1984, was designed to ensure that “consumers have access to sufficient information...” and prohibited misrepresentations “used to influence consumers’ decisions on which goods and services to purchase.” The original Rule, however, could not have anticipated the changes the industry has undergone. In the interest of both consumers and industry, AARP has recommended that the Rule be expanded to include all providers of funeral and burial goods and services.

Expansion of the Funeral Rule by the FTC would better protect consumers and

provide a “level playing field” to all participants in the funeral and burial goods and services marketplace. Even this type of expansion, however, would not alleviate some of the problems associated with the sale of preneed contracts. We have therefore also recommended that the Commission include minimum contract standards in the revised Rule. We believe that the FTC’s current review of the Funeral Rule should lead to action that will address our concerns.

Regarding the current review, while AARP recognizes the difficulty the Commission has with the many demands on their limited resources, we believe the FTC should respond to the Funeral Rule review process in the very near future. It will be three years next month since comments were due to the Commission. During that same interval, the industry has continued to evolve and consumers have continued to fall victim to misleading, deceptive and sometimes criminal behavior on the part of death care providers. A Commission decision might not right all the wrongs, but it could provide some clarity for consumers and providers alike.

### **Other Issues**

An alarming problem confronting consumers is that of identity theft. The act happens quickly and quietly, yet the effects can be devastating and can take literally years to clean up. However, the FTC is to be commended for working on behalf

of consumers to make the rehabilitation of one's identity a little bit easier. Thanks to the Commission's adoption of the ID Theft Affidavit, a consumer can now fill out one form that will alert all of the credit agencies at one time to the plight. Previously, victims were required to report the theft to a number of different credit agencies.

Another area for which the Commission has responsibility are laws that prohibit misleading or deceptive advertising. This oversight authority can be particularly important in areas such as labels of foods and nutritional supplements where false and misleading claims in advertising may cause persons with serious illness and disease to forego proven medical treatments in favor of products glamorized by unsubstantiated claims and potentially risk even greater harm to their health.

Inadequate resources unfortunately limit the FTC's reach in this area.

That leads to our final point: concern over limited funds. When provided with the resources necessary to carry out its mission, the FTC does an excellent job of enforcing the law. Inadequate funding clearly hampers the agency's effectiveness.

Despite uneven enforcement, we support the Commission's efforts to crack down

on false and misleading advertising, deter fraudulent telemarketers and uncover Funeral Rule infractions. We ask the Congress to recognize the importance of the FTC to consumers when making appropriations decisions, granting them the resources to effectively enforce the rules they have promulgated.

### **Conclusion**

Mr. Chairman, AARP appreciates having the opportunity to testify today in support of the Federal Trade Commission's efforts to protect consumers. In particular, we strongly support the proposed revisions to the Telemarketing Sales Rule, including the national Do Not Call registry, which will benefit consumers and should be adopted as proposed with as few exemptions as possible.

In addition, we hope that the Congress will adequately fund the Commission so that it can accomplish the mission it has been given: to enforce consumer protection laws. Thank you for providing us with the opportunity to voice our views.